PUBLIC PROSECUTOR

v.

RUSLAN SULAIMAN

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. AZMI J
[CRIMINAL APPEAL NO. 38 OF 1982]
31 MAY 1982

CRIMINAL PROCEDURE: *Trial - Cautioned statement - Accused - Whether entitled to cautioned statement before commencement of trial - No application made by accused who was unrepresented by counsel - Effect - Whether failure to supply accused with the cautioned statement before commencement of trial would render trial a nullity - Discharge not amounting to an acquittal - Duty of Court - Adjournment.*

This is an appeal by the learned DPP against the order of the learned President Sessions Court, Kuala Lumpur who discharged the respondent not amounting to an acquittal on 29 March 1982 on the ground that the trial was a nullity as the prosecution had not supplied a copy of the cautioned statement to the respondent before the commencement of the trial for an offence under s. 6 of the Dangerous Drugs Act 1980.

Held:

[1] The entitlement of an accused person to a certified copy of his cautioned statement before the commencement of the trial is subject to his application for it and to payment of any necessary fees. In the present case, no application either oral or written was made by the respondent for a copy of his cautioned statement before commencement of the trial.

[2] The trial could not be a nullity merely because the prosecution had supplied a copy of the cautioned statement during the trial and not before commencement of the trial.

[3] As in the present case, if the accused had not made an application for it, the Court would be under a duty to ensure that the prosecution had supplied him with a copy before they proceed to introduce it in evidence; and in such a case, the Court should in appropriate cases allow a short adjournment to enable the accused to study his statement for the purpose of deciding whether to object or agree to its voluntariness.

[4] The order of discharge not amounting to an acquittal is set aside.

[Appeal allowed. Case remitted to the same President for continuation of hearing.]

Case referred to:
Khoo Siew Bee & Anor v. Ketua Polis, Kuala Lumpur [1979] 2 MLJ 49

Legislation referred to:
Dangerous Drugs Act 1952, ss. 6, 37A
Specific Relief Act 1950, s. 44(1)

For the applicant - Gooi Soon Seng, DPP.
For the respondent - In person

JUDGMENT

Mohd. Azmi J:

This is an appeal by the Public Prosecutor against the order of discharge not amounting to an acquittal made by the Sessions Court at Kuala Lumpur on 29 March 1982.

The respondent was charged for having in his possession 752 grams of cannabis, an offence under s. 6 of the Dangerous Drugs Act No. 234 of 1980. He pleaded not guilty, and, as he was unrepresented, the learned President quite properly took great care in ensuring that the respondent understood the charge and the evidence adduced against him and also in assisting him in cross-examining prosecution witnesses. In the course of the trial, whilst the investigating officer (PW3) was giving evidence-in-chief pertaining to a cautioned statement which he had requested Inspector Tan Kok Chew to record from the respondent, the witness informed the court that a copy of the statement had not been supplied to the respondent, and accordingly from the witness box he handed one copy of the document to him. After the learned President had explained to the respondent under what circumstances the cautioned statement would be admissible in evidence under s. 37A of the Dangerous Drugs Act, he adjourned the Court to check the effect of the prosecution supplying the respondent with a copy of his cautioned statement in Court and not before commencement of trial. On resumption of hearing, the learned President ruled that on the authority of *Khoo Siew Bee & Anor. v. Ketua Polis, Kuala Lumpur* [1979] 2 MLJ 49, the respondent had the right to a certified copy of his cautioned statement before the commencement of the trial, and as this was not done, he held that the trial was a nullity. Consequently, he discharged the respondent not amounting to an acquittal. In appealing against the said order, the learned Deputy Public Prosecutor argued that the trial Court was wrong in law in holding that an accused person had a pre-trial right to his cautioned statement and failure to supply him with a copy before the commencement of trial would render the trial a nullity. With respect, I agree with the learned Deputy Public Prosecutor. In my view, what was decided by Suffian LP in *Khoo Siew Bee case* (*ante*) was the right of the accused, on application, to inspect and to a certified copy of cautioned statements recorded from him before commencement of the trial. In that case, before trial, an application was made in writing by defence counsel to the chief police officer, Kuala Lumpur, for copies of accused's cautioned statements to enable counsel to prepare the defence. When the application was refused, an application was made to the High Court by notice of motion for an order pursuant to s. 44(1) of the Specific Relief Act 1950, that the chief police officer supplied the Defence with copies of the cautioned statements. The question before Suffian LP was whether on the application made, the two accused were entitled to copies of cautioned statements made by them before commencement of the trial. After holding that cautioned statements were public documents, His Lordship the Lord President allowed the notice of motion, but His Lordship made it quite clear that his ruling only applied to statements recorded from the accused and not from others who were potential witnesses against or for them. At page 49 of his judgment, Suffian LP has this to say:

> There is no doubt that if during the trial the prosecution seeks to introduce them in evidence, defence counsel would then in fairness be given copies or the opportunity to take instructions. There is also no doubt that if the prosecution elects not to introduce them in evidence, defence counsel may do it, when cross-examining the police officer who recorded the statements and by getting him to produce them in evidence (as defence exhibits) - in which case, again defence counsel would be given copies or an opportunity to take instructions.
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> But the question is: is the accused entitled to copies before the commencement of the trial?

Nowhere in his judgment did the learned Lord President hold that before the commencement of any trial the police were under a duty to supply the accused person with a cautioned statement even when no application was made for such document. The judgment in *Khoo Siew Bee case* must be read in the context of the notice of motion, and I do not think the judgment can be stretched to create a pretrial right of the accused to cautioned statements as envisaged by the learned President in this appeal. The entitlement of an accused person to a certified copy of his cautioned statement before commencement of the trial is subject to his application for it and to payment of any necessary fees. In the present case, no application either oral or written was made by the respondent for a copy of his cautioned statement before commencement of the trial. A copy of the document was however supplied to him voluntarily by the prosecution in the course of the trial. By so doing the prosecution had in fact complied with the ruling in *Khoo Siew Bee* case.

Thus, the trial in the present case could not be a nullity merely because the prosecution had supplied a copy of the cautioned statement during the trial and not before commencement of the trial. The respondent would, of course, be entitled to it before trial, if he had so applied to the police on payment of necessary fees. But failure to supply him would not in any case render the trial a nullity. If he had made an application before trail and was refused, the Court should order that he be supplied with a copy. If he had not made an application for it, as in the present case, then the Court would be under a duty to ensure that the Prosecution had supplied him with a copy before they proceed to introduce it in evidence; and in such a case, the Court should in appropriate cases allow a short adjournment to enable the accused to study his statement for the purpose of deciding whether to object or agree to its voluntariness.

I therefore allow this appeal. The order of discharge not amounting to an acquittal is set aside. The case is remitted to the same President for continuation of hearing.

Also found at [1982] CLJ 372